

June 1, 1973

IBLA 72-135 : A 6499
FRANK ZAPPIA : Motion for Reconsideration
: Denied

ORDER

Frank Zappia has filed a request for reconsideration of this Board's decision of April 2, 1973, in Frank Zappia, 10 IBLA 178, affirming a decision of the Arizona State Office, Bureau of Land Management, declaring certain mining claims null and void.

We have carefully examined the petition for reconsideration and find nothing which would change our decision. Therefore, the Board's decision of April 2, 1973, stands and it will remain the final Departmental action in the matter.

Nevertheless, we comment with regard to assertions in the request. There is no requirement that an applicant for the restoration of land to mineral location be given formal notice of the restoration order when issued. The furnishing of a copy of the order to an applicant is merely a matter of courtesy. This is the reason for the memorandum of September 8, 1941, to the Register stating that a copy of the opening order be sent to Frank Zappia by ordinary mail. If formal notice were required by law or regulation, the Register would have been directed to send a copy of the order to Zappia by registered mail with a post-office return receipt card as proof of service.

With regard to the assertion that notation on the records in the land office was not accomplished, obviously, if they had not been noted, it would have been a difficult, if not an impossible task, after almost 30 years, to identify and retrieve the records pertaining to the matter. In any event, the old tract book township page for T. 9 S., R. 13 W., G&SRM, has the following notation:

9-8-41 "N" opens Secs. 7 and 18, to mining location, entry and patent. (080091.)

The township page for T. 9 S., R. 14 W. has the identical notation except the sections are identified as 1, 2, 11 and 13. Each appropriate tract book section page immediately below the notation of Zappia's application for mineral restoration 080091 has an additional notation which reads:

9-8-41 "N" opens to mining location, entry and patent.

Further, the serial register sheet for Phoenix 080091 contains an identical notation including the specific townships and sections to which the opening is applicable. All of which establishes that the land office records were noted.

Appellant asserts that this Department lacks jurisdiction because at no point was an administrative determination ever properly requested. We point out again that under the plenary powers granted to the Department over the administration of the public lands, the Secretary of the Interior (or his delegate) has authority on his own motion to determine the validity of mining claims. Cameron v. United States, 252 U.S. 450, 459-460 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963). Accordingly, the State Office properly rendered a determination without a hearing, because the validity of the mining locations turned on the legal effect to be given facts of record (a question of law). Foster Mining and Engineering Company, 79 I.D. 587 (1972); The Dredge Corporation, 64 I.D. 368, 375 (1957), 65 I.D. 336 (1958); aff'd sub nom. Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). The State Office decision of September 15, 1971, was served on Mr. Zappia. It notified him of the determination with the reasons therefor and informed him of his right of appeal to the Board of Land Appeals within 30 days from receipt of that decision. In the circumstances of this case, this was sufficient. Also see United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971).

In any event, appellant has had a full opportunity to present to this Board all matters of fact and law he considered pertinent to his contentions. In reaching our decision, we reviewed them de novo. Appellant having had an opportunity to present his case

fully at the highest level in the Department cannot rightly complain of defective consideration below. Northern Pacific Railway Co., 62 I.D. 401, 411 (1955).

Anne Poindexter Lewis, Member

We concur.

Frederick Fishman, Member

Martin Ritvo, Member

